CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH AT MUMBAI

REGIONAL BENCH - COURT NO. 02

Service Tax Appeal No. 88790 of 2018

(Arising out of Order-in-Appeal No. MKK/148/RGD APP/2018-19 dated 18.06.2018 passed by Commissioner of Central Tax, (CGST, Central Excise & Service Tax) (Appeals), Raigarh)

M/s Shree Bhagwati Enterprises .....**Appellant**
Shop No. 3 & 4, Bhagwati Heritage,
Plot No. 29 to 32, 47, 48, 49 & 52,
Sector 21, Kamothe, Navi Mumbai-
410209

VERSUS

Commissioner of Central Excise & Service Tax, Raigad .....**Respondent**
4th Floor, Kendriya Utpad Shulk Bhawan,
Plot – 01, Sec-17, Khandeshwar,
Raigad - 410206

Appearance:

Shri Rajiv Luthia, C.A. for the Appellant
Shri Onil Shivadikar, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

FINAL ORDER NO. A/87485/2019

Date of Hearing: 22.11.2019
Date of Decision: 22.11.2019

Per: S.K. MOHANTY

Heard both sides and perused the records.

2. The appellant is not contesting the adjudged amount of service tax confirmed against it. However, the impugned order was assailed on the ground that the provisions of Section 78 of the Finance Act, 1994 should not be invoked for imposition of equal amount of penalty on the appellant. It has specifically been contended by the appellant that in absence of the ingredients viz., fraud, collusion, suppression

etc., with intent to evade payment of service tax, the provisions of Section 78 *ibid* cannot be invoked, justifying imposition of penalty.

3. On perusal of the case records, I find that the appellant during the relevant period was engaged in the business of construction of residential buildings and commercial complexes. With regard to levy of service tax under such category of services, the issue was highly contentious and was resolved by the Hon'blel Bombay High Court vide order dated 20.01.2012 in the case of Maharashtra Chamber of Housing Industry. Thus, under such circumstances, it cannot be said that non-payment of service tax at the material time by the appellant was owing to the reason of suppression, misstatement, etc. Since, the ingredients mentioned in Section 78 *ibid* are absent in this case and the department had also not specifically brought on any evidence to show mala fides on the part of the appellant, I am of the view that imposition of penalty under Section 78 *ibid* cannot stand for judicial scrutiny.

4. Therefore, the impugned order, to the extent of imposed penalty on the appellant under Section 78 *ibid*, is set aside and the appeal to such extent is allowed in favour of the appellant.

5. In the result, the appeal is partly allowed.

(Dictated and pronounced in the open court)

(S.K.Mohanty)
Member (Judicial)

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